Read The Draft Tribal Strategy

On June 1, 2006, EPA released a draft tribal strategy and is asking for comments within 30 days, until July 1, 2006. View the draft tribal strategy. (PDF file, 14 pages, 138 Kbytes, About PDF files)

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You may use any of the following methods to provide comments. EPA encourages commentors to use e-mail, but will accept all methods.

How To Send Comments	Where To Send Comments	By When
Via e-mail	OUST Tribal Strategy@epa.gov	E-mail received by July 1, 2006
Via facsimile	703-603-0175	Fax received by July 1, 2006
Via overnight (such as Fed Ex or UPS) or hand deliveries	OUST Draft Tribal Strategy c/o Renee Wynn U.S. EPA 1301 Constitution Avenue, N.W. Room 4402A Washington, D.C. 20460 (phone 202-566-1895)	Accepted for delivery by overnight or courier service by July 1, 2006
Via U.S. Postal Service mail	OUST Draft Tribal Strategy c/o Renee Wynn U.S. EPA 1200 Pennsylvania Avenue, N.W. Mailcode: 5103T Washington, D.C. 20460	Postmarked by July 1, 2006

Obtain Paper Copy Of The Draft

You may request paper copies of the draft tribal strategy from the National Service Center for Environmental Publications (NSCEP), EPA's publications distribution warehouse, by calling 1-800-490-9198; writing to U.S. EPA/NSCEP, Box 42419, Cincinnati, OH 45242-0419; or faxing your request to NSCEP at 513-489-8695. Ask for EPA 510-D-06-005, "Strategy For An EPA/Tribal Partnership To Implement Section 1529 Of The Energy Policy Act Of 2005."

Request More Information

For more information about the draft tribal strategy, contact Joe Vescio at <u>vescio.joseph@epa.gov</u> or 703-603-0003.

Strategy For An EPA/Tribal Partnership To Implement Section 1529 Of The Energy Policy Act Of 2005

(Solid Waste Disposal Act Section 9013, 42 U.S.C § 6991I)

U.S. Environmental Protection Agency Office of Underground Storage Tanks Washington, DC www.epa.gov/oust

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Introduction

In the United States there are 561 separate, federally-recognized tribal governments, each with its own unique history, culture, and treaties. Of these tribes, approximately 175 have federally-regulated underground storage tanks (USTs) on their lands. This strategy was developed in coordination with Indian tribes, as required by Section 9013 (a) of the Solid Waste Disposal Act (SWDA), and recognizes the number and diversity of tribes and the need for flexibility in implementing the UST program to address unique tribal issues. This strategy therefore is intended to provide a basic framework that can be used as a foundation for discussing the unique UST program implementation issues of different tribal governments and provides a consistent method whereby EPA and each tribe can continue to cooperatively work on these issues in the future.

EPA's Office of Underground Storage Tanks (OUST) is committed to protecting human health and the environment in Indian Country while supporting tribes' self-government, acting consistent with the federal trust responsibility, and strengthening the government-to-government relationships between tribes and EPA. For more than 20 years EPA has been fulfilling these commitments by providing financial and technical assistance to tribal governments to prevent and clean up releases from USTs, assistance and support to tribal governments to build tribal capacity of their UST programs, and through EPA's direct implementation of the UST program in Indian Country.

Since 1995, OUST has implemented several policies, including Office of Solid Waste and Emergency Response (OSWER) Directive 9610.15, Interim Final National Policy Statement for Underground Storage Tank Program Implementation in Indian Country, and, since 1990, OSWER Directive 9610.11, UST/LUST Enforcement Procedures Guidance Manual. These policy statements have provided OUST with a framework to implement the UST program in Indian Country and have helped EPA and tribes build UST programs throughout Indian Country.

Tribes have also played a significant role in protecting human health and the environment by preventing and cleaning up releases from USTs. Some tribes have developed their own UST program authorities. Some tribal UST programs are model programs that serve as excellent examples of how a UST program should be run. Many tribal members are well trained as UST inspectors and site managers of cleanups.

In Public Law 105-276, Congress authorized EPA to enter into assistance agreements with federally-recognized Indian tribes for development and implementation of programs to manage USTs. In the same law, Congress also authorized EPA to use leaking UST (LUST) Trust Funds to enter into assistance agreements with federally-recognized tribes for LUST cleanups in accordance with SWDA, Section 9003(h)(7). These authorities have increased tribal opportunities for involvement in the UST

program, providing funding and support for development of training programs, regulation development, and tribal UST staff support.

With the passage of the Energy Policy Act of 2005 the Agency has been provided some new tools that may provide greater opportunities for tribal involvement in the UST program. As a result of the Energy Policy Act of 2005, EPA, together with tribal representatives, has developed a new strategy to supplement the program's existing strategy. Section 1529 of the Energy Policy Act of 2005 amends the SWDA by establishing a new Section 9013 regarding USTs in Indian Country.

Section 9013(a) requires EPA, in coordination with Indian tribes, to develop and implement a strategy for implementing the UST program in Indian Country and by August 8, 2007, report to Congress on the status of implementation and enforcement of SWDA Subtitle I in Indian Country. Specifically, by August 8, 2006, SWDA Section 9013(a)(1) directs EPA to develop and implement, in coordination with Indian tribes, a strategy:

- "[G] iving priority to releases that present the greatest threat to human health or the environment, and taking necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of an Indian reservation or any other area under the jurisdiction of an Indian tribe; and
- [T] o implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of an Indian reservation or any other area under the jurisdiction of an Indian tribe."

This strategy along with OUST's existing strategy meet the requirements of SWDA, Section 9013(a). The new strategy presented here is the result of substantial involvement from representatives from 41 tribal nations, all EPA Regions with federally-recognized tribes, and headquarters. The result is a strategy that specifically identifies key issues and actions for improving implementation of the UST program in Indian Country.

In particular, this strategy identifies additional steps that EPA and tribes can take for improving cleanup and compliance of underground storage tanks in Indian Country by strengthening relationships between EPA and tribes, by improving information sharing, and by enhancing tribal capacity for implementing the UST prevention and cleanup programs. In addition, this strategy provides an additional basis for a continuing dialog between EPA and tribes to implement the objectives contained in this document and for tribes to provide input and recommendations to EPA through the continuation of work groups or other means.

This strategy, however, does not address other important issues, such as the absence of authority under SWDA to treat tribes as states, above-ground storage tanks,

or issues regarding Indian Country jurisdictional boundary, issues which can be better addressed through other forums. Rather, it provides a framework that can be used as a basis for continued discussion and for measuring progress in Indian Country. Moreover, this strategy, and the subsequent actions for implementing the strategy, should be viewed as living documents that are open to further refinement as priorities and circumstances change.

Underground Storage Tank Challenges In Indian Country

USTs within Indian Country, representing less than 1% of the regulated USTs nationally, are similar to those within states with facilities ranging from small "mom and pop" gas stations to large facilities owned by multi-national companies. Some of the tanks and facilities are tribally owned. At the end of fiscal year 2005 there were approximately 2,500 active federally-regulated USTs in Indian Country. Of the more than 500 federally-recognized tribes, approximately 175 tribes have federally-regulated USTs on their lands. Of the 175 tribes, about two-thirds have 10 or fewer active USTs; only 12 reservations have 50 or more USTs. The nature of tribal UST programs within Indian Country varies widely, with robust programs for a few tribes, emerging programs for some tribes, and no programs for other tribes. This diversity in tribal capacity creates unique implementation challenges for both tribes and EPA.

In addition to the active USTs, about 5,300 substandard USTs have been closed. Since the inception of the program through September 2005, there have been an estimated 1,065 releases confirmed in Indian Country. Of the 1,065 confirmed releases, cleanups have been initiated at approximately 975 and completed for 675. Although cleanups have been initiated for the majority of the sites, there are approximately 400 (or 37% of all) releases in Indian Country for which cleanups have not yet been completed. Nationally, over 119,000, or 26%, of cleanups remain to be completed.

There are many factors contributing to the cleanup challenge in Indian Country. Cleanups can be very expensive, averaging about \$125,000, and the liability for cleanups lies with the owner and operator. A release with significant ground water contamination can cost more than \$1 million to clean up. Owners and operators in Indian Country may lack the resources to initiate and complete cleanups. Additionally, for LUST sites outside of Indian Country, states typically rely on both LUST funds and their own UST cleanup funds to finance cleanups. Federal LUST funds are available for LUST cleanups in Indian Country. However, state UST cleanup funds are not always available for cleaning up LUST sites in Indian Country.

With respect to compliance, rates of UST operational compliance in Indian Country vary. Operational compliance is a measure of a facility's compliance based on having the equipment required by current UST regulations and performing the necessary operation and maintenance. In fiscal year 2005, approximately 58% of active tanks in Indian Country met leak prevention requirements; 53% met release detection

standards; and 37% met all requirements. The national averages were 78%, 73%, and 66% respectively. There are many factors contributing to the lower compliance rates in Indian Country. In particular, some owners and operators in Indian Country operate small facilities that lack the resources to properly operate and maintain their UST systems. Additionally, owners and operators may lack the resources to obtain the needed training to ensure the UST systems are operated and maintained properly.

Goals And Objectives Of The Strategy

The primary goal of the tribal strategy is to improve human health and the environment in Indian Country by working with tribes to clean up releases from underground storage tanks by giving priority to releases that present the greatest threat to human health and the environment, to implement and enforce UST leak prevention and detection requirements, and to meet the UST program's annual and long-term goals for cleanup and compliance. Subject to the availability of appropriated funds, EPA and tribes intend to work toward achieving these goals through five overarching objectives.

- Objective 1: Strengthening Relationships, Communication, And Collaboration
- Objective 2: Improving Information Sharing
- Objective 3: Implementing New UST Provisions Of The Energy Policy Act
- Objective 4: Implementing UST Prevention Activities Through EPA's Program And By Building Tribal UST Program Capacity
- Objective 5: Implementing LUST Cleanup Activities Through EPA's Program And By Building Tribal UST Program Capacity

Objective 1: Strengthening Relationships, Communication, And Collaboration

In fulfilling EPA's commitment to protecting human health and the environment in Indian Country, consistent with the federal trust responsibility, a major emphasis of this strategy is to strengthen the relationship between EPA's Underground Storage Tank program and tribal governments. Improving our mutual understanding of EPA and tribal governments' needs and constraints through more frequent and meaningful communication is a key ingredient for better program performance. To that end this strategy includes the following actions that, as appropriate, EPA can use to strengthen relationships, communication, and collaboration with tribal governments.

- Consult with tribal governments during planning and decision making if such decisions affect the lands and resources of tribes;
- Cooperate with affected tribes in assessing the impact of UST plans, projects, programs, and activities in Indian Country;
- Remove procedural impediments to work directly and effectively with tribal governments;

- Coordinate with other federal departments and encourage cooperation among tribes, states, and local governments to resolve environmental issues of mutual concern; and
- Continue to provide a forum for meeting at least annually, at a national level, to discuss key issues and proposed solutions, and increase awareness of EPA and tribal needs, priorities, and resources, including expanding the role of tribal governments at the UST national conference.

Objective 2: Improving Information Sharing

A key component in achieving the goals and objectives of this strategy is to assure that relevant information is shared between EPA and tribes. Information on the status of tank compliance and cleanups and the process for funding a UST program is essential in developing a successful program. To further information sharing, this strategy includes the following actions that EPA, as appropriate, can use to improve information sharing with tribal governments:

- Develop and implement a communication and outreach plan and an on-line website to provide tribes with information on EPA UST programs, including information on available funding and guidance on the process for competing for Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA) 104(k) Brownfields grants and obtaining allocations under the Brownfields State and Tribal Response Program grants authorized by CERCLA 128 and which is consistent with all EPA policies including but not limited to those governing competition for assistance agreements;
- Maintain an inventory of sites on Indian Country lands to help evaluate progress
 toward achieving the goals of this strategy. An inventory of UST sites is
 important for setting priorities for compliance and cleanup (e.g., by targeting
 facilities and releases in sensitive drinking water areas). Inventories can be used
 to track regular on-site inspections, implementation of closure requirements, and
 appropriate and timely responses to releases and suspected releases. The
 inventory also can be updated to reflect the installation of new tanks, the removal
 or closure of older tanks, the locations of previously unknown tanks, and data
 errors;
- Provide tribes with information from the federal facility and public record reports required by SWDA sections 9007(b) and 9002(d) on the status of compliance of government-owned tanks. These reports provide information on location, ownership, compliance record, and cleanup status, if applicable (among other items), and may provide a more complete picture of the universe of tank sites in Indian Country;

- To the extent consistent with Agency policies governing competition for assistance agreements, share information about available funding sources, the process for allocating these funds, and the process for competing for funds. Such information sharing may enable tribes to provide more input on tribal resource needs and potentially may assist tribes in acquiring more funds to implement their UST programs;
- Utilize national and regional tribal operations committees to disseminate information; and
- Conduct consultation with tribes on a government-to-government basis consistent with existing EPA policy.

Objective 3: Implementing New UST Provisions Of The Energy Policy Act

There are key provisions of the new Energy Policy Act that apply to states receiving federal funding but do not specify Indian Country. Nonetheless, EPA's goal is to implement the objectives of these provisions in Indian Country as an important step in achieving more consistent program results in release prevention and cleanup in Indian Country. Both EPA and tribes recognize the importance of having policies that can help to ensure parity in program implementation between states and in Indian Country.

Of particular importance are the Energy Policy Act provisions for leak prevention and detection. One of the key components of the Energy Policy Act, which will help ensure parity in program implementation, is to inspect all underground storage tanks. As discussed in objective 4 of this strategy, EPA will work with tribes to inspect every UST every three years. In addition, this strategy includes the goal of working with tribal governments to implement the UST program in Indian Country and the objectives of the other provisions of the Energy Policy Act, including fuel delivery prohibition, owner/operator training, and secondary containment of tank systems near drinking water supplies.

EPA has responsibility for direct implementation of the UST program in Indian Country and will work with tribal governments to explore appropriate tools that are available to implement and enforce these goals.

Objective 4: Implementing UST Prevention Activities Through EPA's Program And By Building Tribal UST Program Capacity

The Agency will continue its efforts to implement and enforce the UST program in Indian Country and assist tribal governments in building tribal capacity to implement and enforce their own UST programs. To accomplish this, consistent with EPA's Indian Policy, the Agency will continue to "take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands."

Some tribes already have developed and implemented their own UST programs. EPA and the tribes intend to continue to work together to encourage the development of tribal UST programs for tribes interested and capable of implementing a program. To that end, this strategy includes the following actions that EPA, as appropriate, can use to help tribes build tribal implementation and leak-prevention capacity by providing resources (consistent with approved Agency budgets), training, federal credentials, or instituting Direct Implementation Tribal Cooperative Agreements (DITCAs) to conduct inspections:

- Provide resources for building capacity and for implementing UST programs.
 Each year Congress appropriates grant funds for tribes to develop and implement programs to manage USTs. EPA has historically provided these funds directly to tribal governments to support prevention activities and to tribal consortia as a means to reach multiple tribes that may each only have a few USTs on their land. Tribes receiving these grants are able to hire staff or continue employing staff dedicated to the UST program. To the extent consistent with approved Agency budgets, EPA intends to continue to provide these funds to support their UST prevention activities.
- Provide training to enable interested and capable tribes to build capacity for developing and implementing their own UST programs. EPA and tribes intend to continue to work together to identify training needs and explore various approaches to providing training efficiently. Continuing education and training is important for keeping tribes up to date on the latest compliance measures required by the program, to provide a forum for tribes to exchange ideas and concerns, and to identify information gaps that a tribe may have when implementing a UST program. EPA and tribes intend to explore the use of inperson and web-based training and the use of tribal instructors as a means of providing UST inspector training, as well as advanced training in UST inspections, UST equipment standards, health and safety issues, and other subjects, as needed.
- Enable interested and capable tribes to conduct inspections and compliance
 assistance. By August 8, 2007, EPA will work with tribes to conduct on-site
 compliance inspections of all USTs that have not undergone an inspection since
 December 22, 1998, including inspections for temporarily closed facilities. After
 completion of these inspections, EPA and tribes, as appropriate, will conduct onsite inspections once every three years to determine compliance. As the
 implementing authority, EPA enforces UST requirements in Indian Country, as
 necessary and appropriate.

Several tribes have well-trained and experienced UST inspectors and can assist EPA's Regions in conducting inspections every three years in Indian Country. SWDA enables EPA to authorize tribal government representatives to conduct inspections on behalf of EPA. Authorizing tribal inspectors can increase

the geographic coverage and frequency of EPA inspections in Indian Country—thus helping to ensure that inspections are conducted every three years—and simultaneously increasing the capabilities of tribal inspectors to conduct inspections under tribal law. After assessing where and when such authorizations are appropriate, EPA can work with tribes to enter into a written agreement on inspections and provide federal credentials to qualified tribal inspectors. DITCAs can serve as the written agreement as well as outline other areas for tribes to assist EPA in other compliance assurance activities. DITCAs and inspector credentials should be used, where it is appropriate, and can be beneficial to both EPA and tribes.

Objective 5: Implementing LUST Cleanup Activities Through EPA's Program And By Building Tribal UST Program Capacity

EPA's strategic plan establishes an annual goal of 30 Indian Country LUST cleanups per year. Although almost two-thirds of all UST releases in Indian Country have been cleaned up, 390 cleanups remain. To meet EPA's annual goal and continue to make progress on cleanups, EPA will continue to give cleanup priority to those releases presenting the greatest threat to human health or the environment. EPA also intends to work with tribes to help tribes build their capacity to identify and address these high-priority LUST sites. To that end, this strategy includes the following actions that EPA, as appropriate, can use to help build tribal capacity to implement LUST cleanup activities. Capacity building can be accomplished by providing resources for corrective action, clarifying the corrective action processes, providing adequate involvement to make sure site cleanups move forward expeditiously, and providing an opportunity for tribes to compete for grants (through the Brownfields competitive grant selection process) for cleaning up contamination at abandoned brownfield sites with USTs.

- Each year, EPA allocates part of its Leaking UST appropriation for grants to tribes to assess and clean up USTs in Indian Country. EPA has successfully used these funds to initiate and clean up two-thirds of all LUST releases in Indian Country. To the extent consistent with approved Agency budgets, EPA intends to continue to provide these funds to support LUST cleanup activities.
- Implement corrective action plans that clarify the cleanup process and provide the opportunity for meaningful involvement. EPA and tribes may generally accomplish this in part through the following actions:
 - Working with interested and capable tribes to effectively develop, adopt, and administer tribal codes and cleanup standards and explore "sitespecific" EPA rulemaking;

- Finalizing EPA's cleanup guidance for Indian Country, which includes a process for taking unique exposure patterns associated with tribal traditions and cultural practices into account;
- Reviewing the corrective action process to identify ways to make it more streamlined and expedite cleanups (such as multi-site approaches and pay for performance cleanups);
- Encouraging cooperation between tribes and states to address UST sites adjacent to Indian Country;
- Promoting more DITCAs for cleanup to enable tribes to assist EPA in conducting corrective action; and
- o Sharing current and relevant information with tribes.
- Each year, EPA provides Brownfields grants for petroleum sites (such as Brownfields assessment, cleanup, and revolving loan fund grants) to states and tribes based on a competitive grant proposal process. EPA will continue to inform tribes of Brownfields meetings and the process for applying for Brownfields grants.

For More Information About The Tribal Strategy

Visit the EPA Office of Underground Storage Tanks' web site at www.epa.gov/oust or call 703-603-9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. This new law significantly affects federal and state underground storage tank programs, will require major changes to the programs, and is aimed at reducing underground storage tank releases to our environment.

The underground storage tank provisions of the Energy Policy Act focus on preventing releases. Among other things, it expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: http://www.epa.gov/oust/fedlaws/nrg05 01.htm

Appendix: List of Related Executive Orders, Statutes, Documents, Policies, and Guidance

Statutes

 42 U.S.C. § 6991l, Resource Conservation and Recovery Act, Section 9013, Tanks on Tribal Lands

Regulations

- 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks
- 40 CFR Part 281.12(a)(2), Approval of State Underground Storage Tank Programs—Scope

Presidential Documents

- George W. Bush's Indian Policy -- Memorandum for the Heads of Executive
 Departments and Agencies, Government-to-Government Relationship with Tribal
 Governments (http://www.epa.gov/indian/pdfs/president-bush-indian.pdf)
- Executive Order 13175 -- Consultation and Coordination with Indian Tribal Governments (http://www.epa.gov/fedrgstr/eo/eo13175.htm)

EPA Policies and Initiatives

- The 1984 EPA Indian Policy (http://www.epa.gov/indian/1984.htm)
- Reaffirmation Memorandum of the 1984 EPA Indian Policy (http://www.epa.gov/indian/pdfs/reaffirmation-indian-policy.pdf)
- Interim Final National Policy Statement for Underground Storage Tank Program Implementation in Indian Country (OSWER Directive 9610.15) (http://www.epa.gov/oust/directiv/d961015a.htm), October 23, 1995

EPA Guidance

- Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees
 of State/Tribal Governments to Conduct Inspections on Behalf of EPA
 (http://www.epa.gov/compliance/resources/policies/monitoring/inspection/statetribalcredentials.pdf), September 30, 2004
- Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf, Memorandum from Michael S. Alushin, Director, Compliance Assessment and Media Programs Division, Office of Enforcement and Compliance Assurance, August 5, 2005

- Use of the LUST Trust Fund for UST Release Sites in Indian Country, Memorandum from Cliff Rothenstein, Director, Office of Underground Storage Tanks, and Susan Bromm, Director, Office of Site Remediation Enforcement, February 24, 2005
- UST/LUST Enforcement Procedures Guidance Manual, OSWER Directive 9610.11, May 1990